Letter to Alexander Graham Bell, October 21, 1913

October 21, 1913. Dr. Alexander Graham Bell, Beinn Bhreagh, near Baddeck, Victoria County, Nova Scotia, Canada. Dear Dr. Bell:—

Bell et al. v. Myers, Interference N o 34,455.

As you may recollect, Myers made a motion to amend the issue of this interference by adding thereto a number of claims, some of which were readable on the structure of his application involved in this interference and others of which were not. As to certain of these claims, the Primary Examiner, the Board of Examiners-in-Chief, and the Commissioner of Patents have concurred in holding that Myers has no right to make said claims and accordingly refused to introduce the same as part of the issue of this interference. By prosecuting the appeals allowed him under the law, Myers has consumed about a year. We are in receipt from the Patent Office of a new declaration of interference adding to the issue a number of claims. Mr. C. J. Bell yesterday advised the writer that he had received a copy of this new declaration of interference and had forwarded the same to you. Accordingly you have before you the claims that have been added as counts of the interference issue.

It will be necessary for each of the co-inventors to execute a new preliminary statement as to the invention of these additional counts, and we enclose herewith preliminary statements for execution by you, Mr. McCurdy and Mr. Baldwin. The dates that are alleged in these preliminary statements are the same as those alleged in the ones previously filed in this interference. We assume that this is correct. Please have these preliminary statements executed and promptly returned to us, inasmuch as the same must be filed in the Patent Office on or before November 17th next. If your preliminary statement and those of Messrs. McCurdy and Baldwin are executed in Canada, the authority of the

Notary before whom they are executed should be certified to by an American consular officer.

We are today forwarding a preliminary statement to Mr. Curtiss and a preliminary statement to Mr. Edward A. Selfridge, as administrator of the estate of Lieut. Selfridge.

After these preliminary statements are filed and approved, it will then be incumbent upon us to take testimony on behalf of the co-inventors to establish the dates set up in the preliminary statements. The Patent Office will indicate a limited period within which we may adduce testimony to this end. All of 2 the evidence which would tend to support these dates should be promptly gotten together. For your guidance and information we enclose herewith copy of a memorandum which we prepared as the result of a conference sometime ago with Mr. Curtiss, and also a memorandum which we prepared as the result of conferences with you and Mr. McCurdy. We wish that you would take up this matter with Messrs. McCurdy and Baldwin.

With respect to the conception of the invention on or about April 6, 1908, we would desire you to produce the photograph which was taken on April 6th, 1908, in Hammondsport, which photograph shows all five of the joint inventors, together with several other people. It is of the greatest importance that we should be able to substantiate, by some one other than the joint inventors, the allegation in the preliminary statement that the invention was disclosed to such outsider on or about April 6th, 1908, which is the date alleged for conception of the invention. Probably some one of the outsiders, whose likeness appears in the photograph in question, might be able to corroborate the allegations of the joint inventors to this effect. Mr. McCurdy stated to us sometime ago that Capt. Baldwin was present at Hammondsport in 1908, and that it is possible that the matter of arranging the lateral balancing rudders at a zero angle of incidence was discussed in his presence; indeed that he may have participated in these discussions and may recollect the same. Mr. McCurdy at that time (April 16th, 1912) stated that he would later go over the matter with Capt. Baldwin, but we do not know whether or not he has done so. We wish that you

would communicate promptly with Capt. Baldwin to ascertain if he can corroborate you in the allegation that the invention in question was disclosed to him in April 1908, while in Hammondsport, and whether he would be willing to give a deposition in this matter.

We also desire to corroborate, by an outsider, the allegation of the joint inventors that on or about June 15th, 1908, flights were made in the old “June Bug” with the lateral balancing rudders arranged at a zero angle of incidence. Probably one or more of the workmen employed in Hammondsport could testify in this connection. We would want the most intelligent man obtainable and one who could give reasons for remembering that it was on or about June 15th, 1908, that the “June Bug” was successfully operated with the ailerons arranged at a zero angle of incidence.

It will be highly desirable to secure depositions from you, Mr. McCurdy, Mr. Baldwin, and Mr. Curtiss, as well as from the corroborating witnesses. Under the authorities, the testimony of one joint inventor cannot be used as corroboratory of the testimony of another joint inventor, the joint inventors in the eye of the law being regarded as an entity. If we cannot, however, obtain corroboratory depositions from outsiders, we will have to do the best we can with the depositions of the joint inventors.

From the foregoing you will appreciate that there is considerable work to be done in connection with this interference' 3 and that we will not have a great deal of time in which to do it. The situation should be carefully discussed between you, so that the several depositions will not be contradictory. We believe that Myers will not only try to prove that he made the invention of the issue prior to Bell et al, but also that the invention was obtained from him. We quote the following from one of the briefs that he filed in the Patent Office:

“The applicant built a machine in Hammondsport just previous to the filing of the original application, and the Patent Office drawings of the said parent application were made from the said machine. The machine was often tested by persons placing their hand on the

car as they would on a lever and turning the same. The ailerons responded immediately. This point was demonstrated to Mr. Curtiss and Mr. McCurdy one time when they visited his shop in Hammondsport, several months before Mr. Curtiss placed these ailerons between the planes of his first machine. In fact, from the conversation between the said two gentlemen at that time it was evident that this was their first idea of this improvement; for the following conversation took place:

Mr. Curtiss: (speaking to Mr. McCurdy and pointing to stabilizers between the superposed planes)

‘That is a good idea, that will get over the Wright patent.’

Mr. McCurdy: ‘I believe it will.’

Mr. Curtiss: ‘Well, we will use them on our next machine.’

Applicant: ‘No Mr. Curtiss, that is my patent.’”

The occasion to which he refers is probably that mentioned in Mr. Curtiss' memorandum.

If this interference is to be contested, it should be done vigorously and no pains or effort should be spared to present the strongest front possible and to maintain, by all of the evidence adducible, the allegations set forth in the preliminary statements. As you will appreciate, the matter of taking the testimony on behalf of the joint inventors, attending the taking of the testimony on behalf of Myers, presenting the case to the various tribunals of the Patent Office and perhaps to the Court of Appeals of the District of Columbia, printing briefs and records, and miscellaneous disbursements, will involve considerable expense. It is needless to add that, if it is decided to proceed with the contest, we would keep this expense as low as possible. A decision as to just what is to be done should, however, be promptly made so that we can prepare to proceed vigorously if the matter is to be carried further.

The writer yesterday had a conference with Mr. C. J. Bell in an effort to ascertain what the policy of the joint inventors was to be, but Mr. Bell was not informed and stated that he would communicate with you in connection with the matter.

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You are of course aware of Judge Hazel's decision of February 21, 1913, at final hearing in the suit brought by Wright against the Herring-Curtiss Company. Doubtless the case will be taken to a higher court where this decision may be reversed. In the meantime we are not informed what, if any, significance you attach to such decision in connection with the present interference.

We are forwarding a copy of this letter to Mr. Curtiss at Hammondsport, and a copy to Mr. C. J. Bell.

Please let us hear from you promptly in the matter.

With best regards and wishes, we remain,

Yours sincerely, K-IW Enc. (5)